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LEGISLATIVE RESPONSIBILITY THROUGH THE PARTY CAUCUS.

"MR. MANN. Mr. Chairman, will my colleague yield for a question.

MR. FOSS. Certainly.

MR. MANN. Do I understand from my colleague's statement that the Democratic members of the Committee on Naval Affairs have had conference concerning this bill from which the Republican members of the committee were excluded?

MR. ROBERTS, of Massachusetts. Sure.

MR. FOSS. I am informed, I will say to the gentleman, that they have had numerous conferences.

MR. ROBERTS, of Massachusetts. Mr. Chairman, if the gentleman will permit, I can state, as a member of that committee, that I went to the Naval Committee room and was told I could not go in because the Democratic members were having what they called an executive session, and that all of the employees of that committee had been excluded from that room, and that they were standing out in the hallway.

MR. MANN. Is it not entirely unusual for a committee like that to turn the whole thing into a partisan proposition?

MR. FOSS. Why, it is something never before heard of in the history of the country, and we will undoubtedly hear of a lot of other things—

MR. GREGG, of Texas. Oh, we will teach you a lot of new things before we get through with you.

MR. FOSS. Which have never been before heard of in the history of the country."

—Debate in House, February 22, 1913.¹

THE CAUCUS IN A NEW PHASE.

THE preceding episode in the debate on the naval appropriations is a recognition of the establishment of a new practice in the domain of "extra-constitutional law," and the introduction of the principle of party unity and the caucus into the committees of the national legislature.

¹ 49 Cong. Rec., 3815.

Far-reaching effects of such an innovation may be seen at a glance, bearing in mind, of course, the vital part played by the committees in the passage or rejection of measures, as well as in drafting or perfecting them. The result of a system of "executive sessions," as described by Mr. Roberts, held behind closed doors, and attended by the majority members alone, is two-fold. In the first place, the committee members of each party are subject to the control of the party caucus of the whole House, and therefore a means is afforded by which the party majority can follow a bill into committee, report it and pass it, without once allowing it to get beyond their control. Absolute helplessness, on the other hand, is the condition in which the minority find themselves, and in which they must remain until a majority of their followers may be elected, or, an improbable contingency, until they can secure the assistance of disaffected opponents.

The great body of what has been aptly termed "extra-constitutional law" ² has been of such sturdy growth as to supplant portions of the fundamental instrument itself. Thus the familiar and useless formality of the electoral college, designed as a means of selecting a non-partisan president, stands at once as a caricature of the rigidity of written constitutions, and as a demonstration of the effectiveness and practical importance of custom when supported by expediency. Further examples will occur to every one, in all fields of party activity, whether in the nominating methods of the great parties, their conventions, committees, and leaders in Nation and State, in township and ward; or in the rules of Congress and the State legislatures—regulation of debate, the powers of presiding officers and of committees, the privilege of members; or where the systematization is carried into the organization of the legislative caucus of the parties. This is the law which determines the administration of our government, and controls absolutely the quality and quantity of our legislation.

To such rules and customs the time has come to add another, the committee caucus. Would it not be well to examine briefly

² Wilson, "Congressional Government."

this comparatively recent manifestation of party organization, the causes of its appearance, the probable nature of its effect?

Like a new tool which the workman at first wields awkwardly, but which with use becomes adapted to his hands, the Constitution in the course of daily usage has become imperceptibly, though very practically, modified in the hands of the government of the American people. Furthermore, as the workman adapts the instruments of labor, and his methods of handling them, to the gradual variations in his strength and skill, and to the variety of materials upon which he works, so have the organs of government tended to bring the Constitution into harmonious adjustment with each stage of their development, and into effective operation upon the solution of new problems, and the treatment of newly-developed spheres of activity. The growth of the country in wealth and population has resulted first, in a corresponding growth in each department of the government, and secondly, in a great extension of the sphere of operation of the government, and the consequent increase in the demands upon it. Under these two heads the causes of increased organization can be distributed and considered.

The problem, the gradual approach to a solution of which we shall review, was, and is; one essentially concerned with party. Not the people of the United States, but a majority of them direct the conduct of public affairs, and in order to make their control at all effective it is absolutely necessary that such a majority should have organization, both for the purpose of formulating and expressing the party will, and to provide a means for the enforcement of this will when expressed. The means to these two ends may be denominated, in the order of their development, party organization and legislative responsibility.

PARTY ORGANIZATION.

One of the central features of the political history of this country has been the development of the party. In the early years of the Union there was hardly any distinctive party division, and, as one writer says, "it was not until * * * the period between 1810 and 1840 * * * that the portentous fabric of party organization which we see today began to be

built up. Its foundations were laid between 1820 and 1830. Its completion can hardly be placed earlier than 1860.”³

Considerable trouble was experienced by the early party leaders in finding a means of keeping the rank and file together, and for years they were forced to rely on personal popularity and following. A change took place when Jackson introduced the spoils system throughout the federal service. It did not take long for a class of “bosses,” or professional unofficial politicians, to make their appearance, and to teach the doctrine of party loyalty and the reward of the faithful. With a fairly constant membership thus assured, the party leaders proceeded to perfect an organization reaching into every community in the country. As national issues arose the congressional candidates of each party adopted the vague position on the question usually set out in the campaign platform by the party leaders. Otherwise no great number of candidates were definitely committed to any specific policy. To this freedom of the individual legislator can be attributed a considerable part of the development of the general caucus in each House, as we shall have further occasion to show.

The other major cause of this development is to be found in the internal conditions of the Congress. The House of Representatives, which met in 1789, contained only sixty-five members, the Senate twenty-six.⁴ Today there are approximately four hundred Representatives, and a quarter as many Senators. As this increase took place a very practical necessity for expediting the growing volume of business and limiting the liberties of individual members was created. Naturally this has always been a problem of greater concern to the House than to the smaller and less expansive Senate, and it is in the House that the party organization has reached its more advanced, highly developed forms.

In order to secure the practical consideration of business it was necessary to subject members to restrictions, and to de-

³ Bryce, in his introduction to Ostrogorski's *Democracy and the Organization of Political Parties*, p. xli.

⁴ 1 Bryce, *American Commonwealth*, p. 127.

wise methods for the selection of important business from the great mass of proposals introduced each year. The solution of this problem was to lay down strict rules of debate and procedure, and place the authority for the enforcement of such rules with the Speaker, and the Rules Committee dominated by him.

As an elective position, the Speakership went to one of the leaders of the majority, and the authority of the Speaker, by the accretions derived from the establishment of precedents, became paramount. Professor Beard, in this connection, remarks that "a considerable portion of the Speaker's power came from his connection with the committee on rules, a committee consisting of himself, and two majority and two minority members named by himself. Inasmuch as this committee virtually had the authority of directing important business in the House, it became the object of bitter attacks."⁵

Mr. Cooper, of Wisconsin, complained on the floor of the House:

"We all know that we can not get a bill passed—every man on the floor does, Republican or Democratic—by unanimous consent unless the Member presenting it first goes to the private chamber of the Speaker and asks to be recognized. The Speaker does not have to give his reasons for any objections he may have. He does not rise upon the floor, but in his private chamber he objects. I wish to say that the present Speaker of the House has always treated me with the utmost courtesy and kindness. A former Speaker of this House compelled me to go to his room at one time. I went there to present a bill which provided simply for the changing of the material which was to go into a public building and which had been recommended by the Supervising Architect. * * * I went to the Speaker's chamber. I had refused on a former occasion to do his bidding. When I went to his room he said, 'I will see about that; come in again.' I went in again. He did not ask me to sit down. He said, 'I do not think I can do that; I do not want to do that; I can not allow that to come up.' * * * A very important rule had previously

⁵ Beard, *American Government and Politics*, p. 283.

come before the House of Representatives. That same Speaker had stopped me at the entrance there and put his hand upon my breast and said, 'Mr. Cooper, you will oblige me very much by not opposing this rule.' That rule related to the Pacific Railroad funding bill. I did oppose it. I was the only Republican of the minority of the committee that reported against the bill; the rule was modified, and for the first time in thirty years the Pacific Railroad people lost their bill. That same Speaker refused practically to recognize me for four or five years for any purpose, and never when he could help it."⁶

By means of the Speaker's office party measures and the measures of party men were pushed through, while party free-lances were punished by a refusal of recognition.

The revolt of only a few years ago,⁷ when a sufficient number of insurgent Republicans joined with the Democrats to defy the Speaker, and the consequent liberalization of the rules has shifted the power formerly held by the Speaker to the majority in Congress, to the extent that it is incumbent upon that party to determine the majority membership of the rules committee, and through it, the rules themselves. As an effective instrument for pushing through party measures the Speakership is made relatively ineffective. As a result of this change, the importance of party has been emphasized, and now the desire of the individual is not so much the good-will of the Speaker as the consideration of the collective members of the party.

Briefly, we may say that the organization of the popular majority has been effectively attained by means of the party system and its subdivisions throughout the country. The organization of the representatives of this majority is not so successful, although the coalescing influence of direct party domination of the rules committee and the consequent dependence of the individual on the good-will of the majority of his party is fairly effective in establishing a community of interest and a spirit of coöperation.

⁶ Reinsch, *Readings*, p. 228.

⁷ March 19, 1910.

LEGISLATIVE RESPONSIBILITY.

A majority can organize and give expression to its will; to make this will effective there must be a definite and ascertainable agent in whom responsibility rests. Under the parliamentary system the Cabinet is responsible and holds power only for so long as it has the confidence of the majority; it is administrative responsibility, rather than legislative. There is one characteristic of our institutions which has always caused comment, and of which Mr. Bryce has said:

"In their effort to establish a balance of power the framers of the Constitution so far succeeded that neither power has subjected the other. * * * But they so narrowed the sphere of the executive as to prevent it from leading the country, or even its own party in the country, except indeed in a national crisis, or when the President happens to be exceptionally popular."⁸

Consequently it is in the legislative branch that a responsible agent must be sought under the congressional system. In this regard Mr. Bryce further points out that "except as regards bills of great importance, or directly involving party issues, there can be little effective responsibility for legislation. The member who brings in a bill is not responsible, because the committee generally alters his bill. The committee is little observed and the details of what passed within the four walls of its room are not published. * * * Individual members are no doubt responsible, and a member who votes against a popular measure, one for instance favored by the working men, will suffer for it. But the responsibility of individuals, most of them insignificant, half of them destined to vanish, like snow-flakes in a river, at the next election, gives little security to the people."⁹

As early as 1885 Woodrow Wilson remarked on the fact that "outside of Congress the organization of the national parties is exceedingly well defined and tangible; no one could wish it, and few could imagine it, more so; but within Congress it is obscure

⁸ 1 Bryce, *American Commonwealth*, p. 288.

⁹ Bryce, *supra*, p. 173.

and intangible. * * * At least there is within Congress no visible, and therefore no controllable, party organization. The only bond of cohesion is the caucus, which occasionally whips a party together for coöperative action against the time for casting its vote upon some critical question.”¹⁰

In recent years these criticisms of our legislative methods have come to be widely held, and steps have been taken, consciously or unconsciously, tending to create a control through centralization of responsibility, and to compensate by indirect means for the isolation of executive and legislature.

This compensation has been effected through the system of committees which has been formed primarily for the careful consideration of certain classes of business, but which has also been used as the basis of a complete administrative machinery. Thus Congress, in addition to its purely legislative functions, has had to parallel the division of duties among the members of the President's Cabinet by instituting a corresponding group of committees. As Mr. Bryce has remarked, it takes a committee and the corresponding cabinet officer to make a ministerial department in the European sense. The committees must decide upon and institute administration policies, basing these on whatever information they may care to gather from executive officials. Here, then, is the source from which specific enactments arise, and we should therefore examine the relation of the party to the committee in order to ascertain the relative force of their respective wills in determining the form and substance of a given act.

Describing the course of a bill, Professor Reinsch says:

“Every measure introduced into Congress is put in the form of a bill or resolution. * * * The ordinary course of a bill or resolution which is passed through the House involves three readings on three different days, between which readings it is referred to and reported on by an appropriate committee, engrossed or written out in a fair hand by a copying clerk, and printed. * * * As every bill is referred to a committee, it is easy to see how these bodies can control legislation, by failing to report measures

¹⁰ Wilson, *Congressional Government*, pp. 98-99.

referred to them or by casting the weight of their influence for or against certain bills by favorable or unfavorable reports." ¹¹

In the Fifty-Ninth Congress there were sixty-one standing committees, of which number two-thirds at least had practically no business to transact, and were valuable solely for the privileges they secured for their chairmen by way of allowances for clerks and other attendants. The real power of the committees is almost exclusively concentrated in about a dozen of them.

Describing the procedure of the committees Mr. Wilson said in 1908 that "the thousands of bills annually introduced * * * go almost automatically to the several committees; and as automatically, it must be added, disappear. The measures reported to the House are measures which the committees formulate. * * * The business of the House is what the committees choose to make it. * * * It is thus that the House has made itself efficient. Its ideal is the transaction of business. * * * If it must talk it talks in sections, in its committee rooms. * * * The formal explanations of the chairman of a committee, made upon the floor of the House, contain few of the elements of contested opinion which undoubtedly show themselves plainly enough in the private conferences of the committees. * * * In every committee there are men representing both party views, and it sometimes happens that the arguments of the minority are very influential in shaping reports made upon measures concerning which no sharp party lines have been drawn." ¹²

This, then, is the law-making agency, and in these committees is the actual seat of responsibility. But it is an accepted and much stated fact that it is practically impossible to attach responsibility for the enactment, or failure to enact, a certain measure to a committee as such. Their membership is not generally known, the relatively perfunctory final vote necessary for the passage of the bill obscures its preceding history. If the system of framing measures now in vogue is not to be entirely

¹¹ Reinsch, *American Legislatures*, p. 26.

¹² Wilson, *Constitutional Government*, pp. 90-96.

supplanted by a new method, the only means of attaching responsibility effectively where it belongs is to make the act of the committee accountable for by the whole party in the House. How could this be done?

To use the words of an eminent commentator the "extra-constitutional organization assumed a two-fold function in the economy of the political system; that of upholding the paramount power of the citizen, and of ensuring the daily working of the governmental machinery. * * * In the first of these two undertakings the organization failed miserably, in the second it achieved a relative success."¹³ That is to say, the domination of the majority will has been ineffectively secured, while the practical conduct of the governmental machinery has been only relatively more efficient.

We do not propose to consider faults in our political life growing out of the neglect or indifference of citizens, but it may be remarked that their indifference is of uncertain duration, and that when aroused the ballot is an effective disciplinary instrument. What is of concern here, however, is the problem of conducting the government in such a way that its conduct and the responsibility of such conduct shall be clear to each and every citizen.

DOMINATION OF COMMITTEES BY THE PARTY CAUCUS.

The debate at the top of this paper suggests the answer to this inquiry. If heretofore the responsibility for measures has been obscured by the privacy of the committee room, why should not the majority party be held accountable? In the past, party lines have been but lightly drawn in the confines of the committee and there has frequently been a vote which would not have given any suggestion of the political affiliations of the members. The advantages of this system are not to be controverted. There is, and can be, no real debate in the House, except in the nature of brief statements from the sponsors of the particular bill. In committee, therefore, the fact that the minority views are given an opportunity for expression is

¹³ 2 Ostrogorski, *Democracy and Political Parties*, p. 539.

claimed to assure a consideration of the measure in all its aspects. But that these advantages are not of great practical importance, Professor Beard goes on to say, "in almost every case the measures in charge of a particular committee are considered or formulated by a sub-committee (in which the minority receives scant recognition), and the whole committee generally accepts its report."¹⁴

The acceptance of responsibility by the whole majority for all acts of committees would not, it appears, affect the composition or construction of bills. On the other hand, if the majority passed a bill the individual members could not say that it was the best measure that they could get presented to them: they would have it in their power to modify objectionable features in caucus.

Such a course would necessitate the control of committee members by the caucus of the party, and would involve the submission of measures drawn up in committee to the caucus of the majority for ratification, before being presented to the whole House. In this way the committee would have the same liberty in framing a bill that they now enjoy, except that they would act practically as appointees of the caucus and not of the House, and as such would of necessity have to exclude the minority from the most important of their deliberations, in order not to be subject to attack based on intra-party dissensions prior to the formation of the battle line in the House itself.

Similar changes have been suggested, although the recent tendency to exclude the minority, actually and physically, from committee deliberations has made the advisability and practicability of the change much more marked. Professor Reinsch was of opinion that a highly intensive concentration of authority in the hands of the majority was essential; and Professor Beard said, to the same effect, that "it may be that, while retaining the committee system now in force, we may secure responsibility by frankly recognizing the power in the hands of the chairmen of important committees, and by holding them defi-

¹⁴ Beard, *American Government and Politics*, p. 278.

nately responsible as party leaders. Indeed there are signs that we are going in that direction.”¹⁵

If he were writing today, instead of in 1908, there is little doubt that he would have said, “Indeed there are signs that we have gone in that direction—that we are there.”

Certainly the elements of the new system are here in operation, even if they have not been coördinated, and their effect as a unit acknowledged. We have a party caucus, with a procedure as definite as that of the House; we have a party committee wherein the minority is seldom allowed to give persuasive utterance to their views.

Mr. Fergusson, of New Mexico, remarked in the Congressional Record of November 11, 1913, in support of the Democratic caucus:

“The individual members of the majority party, each and every one of them honor bound by his party platform and his expressed and implied pledge to carry out by his vote and action such principles, meet in caucus to adjust the real or fancied conflicts between the great general principles and local, special, and minor interests, to ascertain what may be reconciled and found consistent with the main purpose of the people and what must be ignored or made to give way to the greater general good. That is the legitimate, indeed the necessary, aim of the party caucus, so that the full strength of the majority party may be made effective to carry out the people’s will as to overshadowing, nation-wide principles of government.”¹⁶

And, summing up a reply of Democratic leader Underwood on the floor of the House, the Progressive leader said:

“Mr. MURDOCK. I thank the gentleman from Alabama for his explanation, and think it has been quite full. The Democratic caucus does not admit reporters nor the public to the conferences, and therefore the journal is prepared in secret caucus and given only to inquirers.”¹⁷

Every resolution offered in the caucus is entered on the journal of that body, and is given to reporters or others; the dis-

¹⁵ Beard, *supra*, p. 279.

¹⁶ Cong. Rec., 6626.

¹⁷ April 17, 1913. 50 Cong. Rec., 185.

cussion is not made public. The "rules" of the caucus are given in full in the note below,¹⁸ and show that party allegiance to

¹⁸ DEMOCRATIC CAUCUS RULES.

PREAMBLE.

In adopting the following rules for the Democratic caucus we affirm and declare that the following cardinal principles should control Democratic action:

- (a) In essentials of Democratic principles and doctrine, unity.
- (b) In non-essentials, and in all things not involving fidelity to party principles, entire individual independence.
- (c) Party alignment only upon matters of party faith or party policy.
- (d) Friendly conference and, whenever reasonably possible, party co-operation.

RULES.

1. All Democratic Members of the House of Representatives shall be *prima facie* members of the Democratic caucus.

2. Any member of the Democratic caucus of the House of Representatives failing to abide by the rules governing the same shall thereby automatically cease to be a member of the caucus.

3. Meetings of the Democratic caucus may be called by the chairman upon his own motion, and shall be called by him whenever requested in writing by 25 members of the caucus.

4. A quorum of the caucus shall consist of a majority of the Democratic Members of the House.

5. General parliamentary law, with such special rules as may be adopted, shall govern the meetings of the caucus.

6. In the election of officers and in the nomination of candidates for office in the House, a majority of those present and voting shall bind the membership of the caucus.

7. In deciding upon action in the House involving party policy or principle, a two-thirds vote of those present and voting at a caucus meeting shall bind all members of the caucus: *Provided*, That said two-thirds vote is a majority of the full Democratic membership of the House: *And provided further*, That no Member shall be bound upon questions involving a construction of the Constitution of the United States or upon which he has made contrary pledges to his constituents prior to his election or received contrary instructions by resolution or platform from his nominating authority.

8. Whenever any member of the caucus shall determine, by reason of either of the exceptions provided for in the above paragraph, not to be bound by the action of the caucus on these questions, it shall be his duty, if present, so to advise the caucus before the adjournment of the meeting, or, if not present at the meeting, to promptly notify the

the majority vote is not enforced in three instances: first, "upon questions involving a construction of the Constitution;" second, in the redemption of pledges "made to his constituents prior to his election;" or, third, to comply with the "platform of his nominating authority." The Democratic caucus of the present session met almost continuously for the first three weeks. Under the rules those who fail to abide by them cease to be members of the caucus; a majority of the party is a quorum, and two-thirds of those present may bind the party, provided such two-thirds is also a majority of the full party membership in the house.

A member of the minority recently complained:

"The bill (the currency bill) now comes to the House for consideration, but under the caucus gag every amendment is to be summarily voted down. * * * What is the use of offering amendments when the caucus majority have entered into a covenant with each other to vote down every amendment that might be offered?"¹⁹

With regard to the party domination of committees the same Representative may be quoted:

"It is to be regretted that 14 Democratic members of the Banking and Currency Committee have felt the necessity of excluding from the deliberations of the committee 7 worthy members who were commissioned by this House to act on this important measure. For eight weeks the majority of the committee held secret meetings for the purpose of considering the bill, and this House, with full

Democratic leader in writing, so that the party may be advised before the matter comes to issue upon the floor of the House.

9. That the five-minute rule that governs the House of Representatives shall govern debate in the Democratic caucus unless suspended by a vote of the caucus.

10. No persons except Democratic Members of the House of Representatives, a caucus journal clerk, and other necessary employees, shall be admitted to the meetings of the caucus.

11. The caucus shall keep a journal of its proceedings, which shall be published after each meeting, and the yeas and nays on any question shall, at the desire of one-fifth of those present, be entered on the journal.

—50 Cong. Rec., 5245.

¹⁹ Mr. Dillon in House, Sept. 13, 1913, 50 Cong. Rec.

knowledge that the seven members were excluded and denied the right to participate in the deliberations of the committee, has acquiesced in the exclusion and indorsed the action of the majority of the committee." ²⁰

And he then, to show the impropriety of such action, describes the very circumstances which make it necessary:

"From the secret chamber of the committee came mutterings of discord and strife. Individuality asserted itself. Insurgency broke loose. Those in control of the committee must keep the upper hand, and for that purpose the all-powerful caucus is called." ²¹

That this is not a procedure confined to particularly important measures such as the currency bill may be seen by repeating a portion of the opening quotation of this paper:

"MR. ROBERTS, of Massachusetts. Mr. Chairman, if the gentleman will permit, I can state, as a member of that committee, that I went to the Naval Committee room and was told I could not go in because the Democratic members were having what they called an executive session, and that all of the employees of that committee had been excluded from that room, and they were standing out in the hallway." ²²

Responsibility may be analyzed into the possession of control by a specific agency, and the general knowledge of the fact by the persons to whom accountability is owed. It can scarcely be denied that the dominant party today exercises a complete control over legislation, and there is only necessary to be added the general acceptance of that fact by the citizens of the country at large, in order that we may have full responsibility.

Undoubtedly there is opposition to the caucus, but this can be traced—apart from the complaint of disappointed minority members—to two sources:

In the first place the caucus is regarded with suspicion as a sort of party "frame up." This belief is certainly well founded, but the resulting fear can be removed, if it is pointed out that

²⁰ Mr. Dillon, *supra*.

²¹ Mr. Dillon, *supra*.

²² *Supra*. See p. 1, Note 1.

a well-grounded governmental policy is essentially a "frame up," and that by accepting this fact, and requiring good and loyal service from their representatives, the people will be in closer touch with the operation of their government than they have been for many years past.

The second cause for the unpopularity of the caucus inheres in the characteristic attitude of Americans towards representative government. Every voter feels that the congressman from his district, though of the minority party, should have a voice in the conduct of affairs. Not only is every man free and equal, but the districts which each congressman represents are equal and possessed, in the public mind, of equal privileges. It is the doctrine of equality carried to its logical conclusion—one is tempted to say, to absurdity. It has given an entirely false conception of the role of a minority in a representative Democracy.

In no other country has the minority party the pretensions to consideration which are so firmly adhered to in the United States. When the position of the minority party has been popularly accepted as being no different from the role played in British government by the minority of the House of Commons, the second class of objections to the caucus system will have disappeared, and probably all necessity for minority membership on standing committees will go with it.

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